



375276

STATE OF INDIANA)	ADMINISTRATIVE ADJUDICATION
) SS:	
COUNTY OF MARION)	DOCKET NO. 06-IP-0276
CITY OF INDIANAPOLIS,)	
)	
Plaintiff,)	
)	
VS.)	
)	
ECOLOGICAL SYSTEMS, INC.,)	
)	
Defendant.)	

COMPLIANCE AGREEMENT

Plaintiff is the City of Indianapolis, ("City") a body corporate and politic, acting through its Department of Public Works, Office of Environmental Services ("OES").

Defendant is Ecological Systems, Inc. ("Ecological Systems"), a company authorized to conduct business in the State of Indiana. Ecological Systems provides wastewater recycling, treatment, and disposal services in the City of Indianapolis and Marion County

The Notice of Violation in this cause was issued on February 13, 2006, and revised on June 28, 2006, alleging that Ecological Systems violated Chapter 671 "Sewers and Sewage Disposal", Section 671- 16(a). More specifically, Ecological Systems was alleged to have discharged industrial wastewater into a City sewer with in exceedance of the allowable limits.

In the Notice of Violation, the City further alleged the following:

Evidence of Violations:

The City of Indianapolis Office of Environmental Services (City) hereby notes the following ordinance violations based upon sampling conducted by Ecological Systems, Inc. (ESI) to determine compliance with industrial discharge permit number 495306. The sample results and the limit are noted in milligrams per liter (mg/l).

Sample Date	Sample Taken By	Parameter	Result	Limit
December 19, 2005	Industry	BTEX	2.7 mg/l	0.5 mg/l
January 25, 2006	Industry	BTEX	0.684 mg/l	0.5 mg/l
January 25, 2006	Industry	Benzene	0.175 mg/l	0.05 mg/l
February 20, 2006	Industry	BTEX	0.726 mg/l	0.5 mg/l
February 20, 2006	Industry	Benzene	0.139 mg/l	0.05 mg/l
March 31, 2006	Industry	BTEX	2.25 mg/l	0.5 mg/l
March 31, 2006	Industry	Benzene	0.895 mg/l	0.05 mg/l
April 28, 2006	Industry	BTEX	2.77 mg/l	0.5 mg/l
April 28, 2006	Industry	Benzene	0.865 mg/l	0.05 mg/l
May 15, 2006	City	Copper	2.77 mg/l	0.405 mg/l
May 30, 2006	Industry	Benzene	0.133 mg/l	0.05 mg/l

Ecological Systems, Inc. failed to comply with limits in Industrial Discharge permit number 495306. Specifically, Ecological Systems, Inc. failed to comply with the BTEX limit on five (5) occasions, the benzene limit on five (5) occasions, and the copper limit on one (1) occasion.

Chapter 671, Section 671-16(a) states, in pertinent part, that "Notwithstanding any other section, any person who violates any provision or discharge limit of this chapter may be fined an amount not to exceed two thousand five hundred dollars (\$2,500.00). A violation of any permit issued under this chapter or special agreement entered into under the authority of this chapter shall constitute a violation of this chapter. Each day's violation shall constitute a separate offense."

Ecological Systems, Inc. failed to comply with Chapter 671. Ecological Systems, Inc. is required to comply with Chapter 671 of the Sewers and Sewage Disposal Ordinance of the Consolidated City of Indianapolis and Marion County, Indiana.

The parties agree that settlement of this Notice of Violation is in the public interest and consent to the entry of this Compliance Agreement, without further litigation, as the most appropriate means of resolving the issues raised herein. The parties agree that, pursuant to Section 103-501 through 513 of the Revised Code of the Consolidated City and County, an

Administrative Hearing Officer has authority and jurisdiction to approve, modify and enforce this Compliance Agreement and to assess stipulated penalties, resolve disputes which arise under and take any action necessary or appropriate for the construction or implementation of this Compliance Agreement. Entry into this Compliance Agreement constitutes a full resolution of all enforcement issues or potential enforcement issues related to the Notice of Violation and City shall not hereafter bring any enforcement action for the same alleged violations with the exception of any action necessary to enforce the terms of this Compliance Agreement. The parties agree to and shall be bound by the requirements of this Compliance Agreement.

NOW, THEREFORE, before the taking of any testimony, and without a hearing of any issue of fact or law and upon the consent of the parties, it is agreed by the parties and approved by the authorized Administrative Hearing Officer:

COMPLIANCE PROGRAM

1. Ecological Systems agrees to comply with Chapter 671 of the Revised Municipal Code of Indianapolis and Marion County, Indiana ("Chapter 671"), in all of its future operations.

2. Ecological Systems agrees to undertake the following tasks according to the indicated schedule to maintain compliance with Chapter 671, and all other applicable requirements:

- A. To ensure compliance with the BTEX and benzene limits contained in industrial discharge permit number 495306, Ecological Systems shall install and operate an air stripper. The air stripper, identified by Ecological Systems, will be a QES EZ-tray low profile stainless steel model number 24.6 that will provide removal of BTEX and benzene from the wastewater prior to discharge to the City's system.

NOTE: The City acknowledges ESI's good faith effort to install and operate the air stripper system in a timely manner. To this end, the penalty assessed in Section 9 factors in the potential violations that may occur between the finalization of the Compliance Agreement and the implementation of the air stripper system. Therefore, no additional

penalties will be assessed outside of this Compliance Agreement for BTEX and benzene limit violations that may occur during this time.

- B. Due to the on-going accumulation of BTEX and benzene violations expected each month when compliance sampling is conducted, the system shall be installed and operated as soon as practicable. Within five (5) days of the commencement of operation of the air stripper system, the City shall be notified.
- C. Within thirty (30) days of the commencement of operation of the air stripper, Ecological Systems shall provide written procedures to ensure proper maintenance of the system. The procedures shall be incorporated into industrial discharge permit number 495306 and a log of the maintenance activities must be kept on-site for inspection and review for three (3) years from the date of maintenance.
- D. Within thirty (30) days from the beginning of the operation of the system, Ecological Systems shall provide documentation confirming the final installation and operation of the air stripper system.

GENERAL PROVISIONS

3. **Stipulated Penalties.** Ecological Systems shall pay stipulated penalties for failure to comply with the terms of this Compliance Agreement specified below as follows:

- A. Ecological Systems shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per violation for each day for failure to comply with any specified deadline or requirement contained in Sections 2. and 9. of this Compliance Agreement.
- B. All accrued stipulated penalties shall be paid by Ecological Systems within thirty (30) calendar days, after the date of receipt of a written demand by the City. Stipulated Penalties shall be paid in the form of a check made payable to the City of Indianapolis and delivered to the following:

Enforcement Program Manager
City of Indianapolis
Office of Environmental Services
2700 South Belmont Avenue
Indianapolis, Indiana 46221

- C. Any dispute with respect to Ecological Systems' liability for a stipulated

penalty shall be resolved under the Dispute Resolution provisions of Section 4 of this Compliance Agreement. Ecological Systems shall bear the burden of proving that it is not subject to stipulated penalties. If the City prevails in such a dispute and, upon the request of the City, a Court of competent jurisdiction determines that the City has shown that Ecological Systems was unreasonable in disputing liability, Ecological Systems shall pay the City's costs and reasonable attorneys' fees and interest at the percentage rate established by Indiana Code §24-4.6-1-101, for the time period starting with the date that the stipulated penalty should have been due, and ending on the date payment is made.

- D. Stipulated penalties are not the City's exclusive civil remedy for any violation of this Compliance Agreement by Ecological Systems, and the City reserves the right to use any remedies to which it is entitled, including, but not limited to, civil penalties and injunctive relief, for Ecological Systems' failure to comply with any provisions of law. However, the amount of any civil penalty assessed for a violation by Ecological Systems of Chapter 671 that is also considered a violation of this Compliance Agreement shall be reduced by an amount equal to the amount of any stipulated penalty previously assessed and paid pursuant to this Compliance Agreement for the same violation.
- E. Stipulated penalties shall not apply to delays deemed to be force majeure by the City pursuant to the Force Majeure provisions of this Compliance Agreement.

4. **Force Majeure.** Ecological Systems' obligation to meet any requirements set forth in this Compliance Agreement may only be excused to the extent that such delay is beyond the control of, and without the fault of, Ecological Systems despite Ecological Systems' best efforts to meet the requirements. "Best efforts to meet the requirements" shall include Ecological Systems' mitigation of the effects of any potential force majeure event (1) as it is occurring and (2) following the force majeure event, such that delay in meeting these requirements is mitigated to the greatest extent possible. "Force majeure" does not include financial inability of Ecological Systems to complete the work required by the Compliance Agreement or increases in costs to perform such work.

- A. Ecological Systems shall notify the City by telephone, within three (3) business days of discovering any event which causes or may cause a delay in its compliance with any provision of this Compliance Agreement. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe in detail the anticipated length of delay, the precise

cause or causes of delay, the measures taken by Ecological Systems to prevent or minimize the delay, and the timetable by which those measures will be implemented. Ecological Systems shall submit with any such notice all available documentation which supports its claim that a delay was caused by a force majeure event. Ecological Systems shall have the burden of demonstrating that an event is force majeure. The decision of whether the event is force majeure shall be made by the City, and shall be communicated to Ecological Systems in writing within ten (10) calendar days of receipt of Ecological Systems' written notification.

- B. If the City determines that the delay or anticipated delay was caused by a force majeure event, then the City shall extend, in writing, the time period for performance under this Compliance Agreement by the amount of time attributable to the force majeure event. If the City determines that the delay was not caused by a force majeure event, and Ecological Systems disputes that determination, then the parties shall attempt to resolve the dispute informally pursuant to the dispute resolution procedures set forth in Section 5. of this Compliance Agreement.

5. **Informal Dispute Resolution.** The dispute resolution procedures of this Section shall apply to all provisions of this Compliance Agreement, except as otherwise provided herein.

- A. Ecological Systems and the City shall initially negotiate informally any dispute that arises under this Compliance Agreement. Informal negotiations shall end seven (7) calendar days after either party advises the other in writing that a dispute continues to exist that cannot be resolved informally, unless the parties agree in writing to extend informal negotiations.
- B. If the parties cannot informally resolve a dispute as provided for above, then the City or Ecological Systems shall have the right to petition the Administrative Hearing Officer for a hearing on the dispute. The decision of the Administrative Hearing Officer resolving the dispute is a final action and may be appealed to a court of competent jurisdiction pursuant to Section 103-512 of the Revised Code of the Consolidated City and County.

6. **Right of Entry.** Ecological Systems shall allow any authorized representative of the City upon presentation of proper credentials, to enter upon the premises of the Indianapolis facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Compliance Agreement.

- 7. **Notices.** Any notice, report or documentation, required by this Compliance

Agreement shall be submitted to the attention of:

For the City of Indianapolis:
Enforcement Program Manager
City of Indianapolis
Office of Environmental Services
2700 South Belmont Avenue
Indianapolis, Indiana 46221
Telephone: (317) 327-2234
Facsimile: (317) 327-2274

For Ecological Systems, Inc.:
Responsible Corporate Official
Ecological Systems, Inc.
4910 West 86th Street
Indianapolis, Indiana 46268
Telephone: (317)874-0074
Facsimile: (317)874-0108

Either party may substitute for those designated to receive such notices by providing prior written notice to the other party.

8. **Modification.** Any Party to this Compliance Agreement may petition the Administrative Hearing Officer for modification of its provisions.

- A. No party may petition the Administrative Hearing Officer for a modification of this Compliance Agreement without first having made good faith effort to reach agreement with the other party on the terms of any such modification.
- B. The parties may petition the Administrative Hearing Officer to modify any requirement of provision of this Compliance Agreement by mutual agreement.

9. **Monetary Settlement.** This Compliance Agreement is in full settlement and satisfaction of all matters alleged in the Notice of Violation. Entry into this Compliance Agreement does not constitute an admission of any violation. Entry into this Compliance Agreement constitutes a full resolution of all enforcement issues or potential enforcement issues related to the Notice of Violation and the City shall not hereafter bring any enforcement action

for the same alleged violations with the exception of any action necessary to enforce the terms of this Compliance Agreement.

- A. If the air stripper system described in Section 2. of this Compliance Agreement is installed and operational by October 1, 2006, the payment of a civil penalty of Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750.00) shall be submitted by Ecological Systems.
- B. If the air stripper system described in Section 2. of this Compliance Agreement is installed and operational after October 1, 2006, but by November 1, 2006, the payment of a civil penalty of Twenty Thousand Seven Hundred Fifty Dollars (\$20,750.00) shall be submitted by Ecological Systems.
- C. If the air stripper system described in Section 2. of this Compliance Agreement is installed and operational after November 1, 2006, but by December 1, 2006, the payment of a civil penalty of Twenty Five Thousand Seven Hundred Fifty Dollars (\$25,750.00) shall be submitted by Ecological Systems.
- D. If the air stripper system described in Section 2. of this Compliance Agreement is installed and operational after December 1, 2006, but by January 1, 2007, the payment of a civil penalty of Thirty Thousand Seven Hundred Fifty Dollars (\$30,750.00) shall be submitted by Ecological Systems.
- E. If the air stripper system described in Section 2. of this Compliance Agreement is installed and operational after January 1, 2007, the payment of a civil penalty of Thirty Thousand Seven Hundred Fifty Dollars (\$30,750.00) shall be submitted by Ecological Systems and the stipulated penalties as described in Section 3. of this Compliance Agreement shall be imposed.

Payment shall be made by Ecological Systems, in the form of a check, made payable to the **City of Indianapolis Office of Finance and Management** and delivered within thirty (30) days from the date of commencement of operation of the air stripper described in Section 2. of this Compliance Agreement, as stated in Ecological Systems' notice to the City pursuant to Section 2.B. of this Compliance Agreement. Payment shall be made to the following:

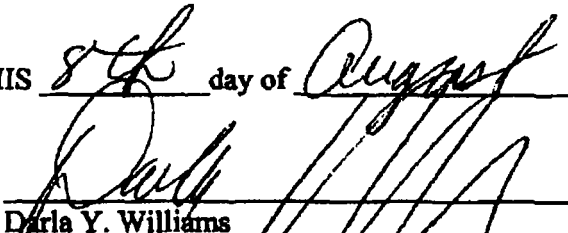
Enforcement Program Manager
Office of Environmental Services
City of Indianapolis
2700 South Belmont Avenue
Indianapolis, Indiana 46221

10. **Retention of Jurisdiction.** This Administrative Hearing Officer shall retain jurisdiction over this matter to modify or enforce the terms of this Compliance Agreement to assess stipulated penalties, to resolve disputes arising under the terms of this Compliance Agreement, or to take any action necessary or appropriate for construction or implementation of this Compliance Agreement.

11. **Effective Date.** This Compliance Agreement shall be effective upon the date that it is approved by the Administrative Hearing Officer.

12. **Satisfaction of Judgment.** This Compliance Agreement shall be deemed satisfied upon the completion and acceptance thereof by the City of each condition or obligation placed upon Ecological Systems herein and upon payment by Ecological Systems of all civil penalties as provided for in Section 2. and Section 9. hereof.

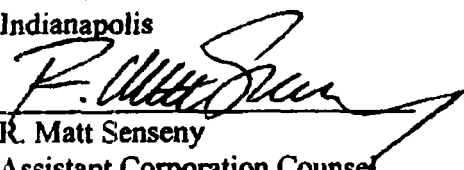
IT SO ORDERED THIS 8th day of August, 2006.



Darla Y. Williams
ADMINISTRATIVE HEARING OFFICER
Authorized by Section 163-03 of the
Revised Code of the Consolidated City and County

FOR PLAINTIFF
City of Indianapolis

By:



R. Matt Senseny
Assistant Corporation Counsel
200 East Washington Street
1601 City-County Building
Indianapolis, Indiana 46204

Dated: 8/4/06

FOR DEFENDANT
Ecological Systems, Inc.

By:

Joseph T. Biggio
Signature

Dated: 8/3/06

Joseph T. Biggio
Printed Name

Vice President of Operations
Title

Copies to:

Cheryl Carlson
Enforcement Program Manager
Office of Environmental Services
City of Indianapolis
2700 South Belmont Avenue
Indianapolis, Indiana 46221

Matt Senseny
Assistant Corporation Counsel
City of Indianapolis
200 East Washington Street
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